

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

W.A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL OF)
THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the TRUSTEE FOR)
NATURAL RESOURCES FOR THE)
STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

Case No. 4:05-CV-00329-TCK-SAJ

TYSON FOODS, INC.,)
TYSON POULTY, INC.,)
TYSON CHICKEN, INC.,)
COBB-VANTRESS, INC.,)
AVIAGEN, INC.,)
CAL-MAINE FOODS, INC.,)
CAL-MAINE FARMS, INC.,)
CARGILL, INC.,)
CARGILL TURKEY PRODUCTION,)
LLC,)
GEORGE'S INC.,)
GEORGE'S FARMS, INC.,)
PETERSON FARMS, INC.,)
SIMMONS FOODS, INC., and)
WILLOW BROOK FOODS, INC.,)

Defendants,)

TYSON FOODS, INC., TYSON)
POULTRY, INC., TYSON CHICKEN,)
INC., COBB-VANTRESS, INC.,)
GEORGE'S INC., GEORGE'S FARMS,)
INC., PETERSON FARMS, INC.,)
SIMMONS FOODS, INC., and WILLOW)
BROOK FOODS, INC.)

Third-party Plaintiffs,)

vs.)

KEVIN R. AND BARBARE L.)
KELLEY d/b/a DIAMOND HEAD)
RESORT, et al.,)
)
Third-Party Defendants.)

**THIRD PARTY DEFENDANTS KEVIN R. AND BARBARA L. KELLEY,
INDIVIDUALLY AND D/B/A DIAMOND HEAD RESORT'S
ANSWER TO THIRD PARTY COMPLAINT**

COMES NOW, Third Party Defendants Kevin R. and Barbara L. Kelley, individually and d/b/a Diamond Head Resort (hereinafter "Diamond Head Resort"), by and through its attorneys of record, Kenneth E. Wagner and Marcus N. Ratcliff, of the law firm Latham, Stall, Wagner, Steele & Lehman, P.C., and for their Answer to Third-Party Complaint states as follows:

1. Third Party Defendant Diamond Head Resort denies each and every allegation contained in Third Party Plaintiffs' Third Party Complaint except those allegations which are specifically admitted.

2. Third Party Defendant Diamond Head Resort denies the allegations stated in Paragraphs 1 through 9 of Third Party Plaintiffs' Third Party Complaint and demands strict proof thereof.

3. Third Party Defendant Diamond Head Resort is without sufficient knowledge or information to form an opinion or belief as to the truth of the allegations stated in Paragraphs 10 through 90 and Paragraphs 92 through 170 of Third Party Plaintiffs' Third Party Complaint and therefore denies the same and demands strict proof thereof.

4. Third Party Defendant Diamond Head Resort admits Kevin and Barbara L. Kelley d/b/a Diamond Head Resort own and operate Diamond Head Resort on the real

property described in Paragraph 91 of Third Party Plaintiffs' Third Party Complaint. Third Party Defendant Diamond Head Resort denies the remaining allegations stated in Paragraph 91 of Third Party Plaintiffs' Third Party Complaint and demands strict proof thereof.

5. Third Party Defendant Diamond Head Resort denies the allegations stated in Paragraphs 170 through 221 of Third Party Plaintiffs' Third Party Petition and demands strict proof thereof.

AFFIRMATIVE DEFENSES

6. Third Party Defendant Diamond Head Resorts incorporates Paragraphs 1-5 of its Answer and asserts the following affirmative defenses:

7. Third Party Plaintiffs have failed to state a claim against Third Party Defendants Kevin and Barbara L. Kelley d/b/a Diamond Head Resort for which relief can be granted.

8. Third Party Defendant Diamond Head Resort asserts any and all defenses which Third Party Plaintiff may have against Plaintiff.

9. Third Party Defendant Diamond Head Resort reserves the right to move for separate trial on the allegations asserted by Third Party Plaintiff.

10. Third Party Defendant Diamond Head Resort states that Third Party Plaintiffs have failed to join indispensable parties to this action.

11. Third Party Defendant Diamond Head Resort states that any damages as described in Third Party Plaintiffs' Third Party Complaint are the result of acts committed by the Third Party Plaintiff.

12. Third Party Defendant Diamond Head Resort states that any damages as described in Third Party Plaintiffs' Third Party Complaint are the result of acts committed by persons or entities which are not named in this action and over which Diamond Head Resort has no control.

13. Third Party Defendant Diamond Head Resort states that neither contribution nor indemnification may lie against it in favor of Third Party Plaintiffs.

14. Third Party Defendant Diamond Head Resort reserves the right to assert additional affirmative defenses upon the completion of discovery.

15. Third Party Defendant Diamond Head Resort reallege and adopt the arguments made by the State of Oklahoma to stay or strike the Third Party Proceedings.

WHEREFORE, having fully responded to the Third Party Complaint, Third Party Defendant Diamond Head Resort requests this Court deny all relief requested by Third Party Plaintiffs, dismiss Third Party Defendant Diamond Head Resort from this action and award Third Party Defendant Diamond Head Resort with costs, attorneys' fees and all other relief to which it is entitled.

Respectfully submitted,

ss/ Marcus N. Ratcliff

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Attorneys for Third Party Defendant Kevin
Kelley and Barbara L. Kelley d/b/a
Diamond Head Resort

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of April, 2006, a true and correct copy of the foregoing instrument was served via CM/ECF to the following:

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and on this 21st day of April, 2006, a true and correct copy of the foregoing instrument was placed in the U.S. Mail with proper postage affixed to the following:

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